

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MARTELL L. McMANUS,	§
	§
Defendant Below-	§ No. 34, 2011
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID Nos. 0911003645 and
Plaintiff Below-	§ 1001003468
Appellee.	§

Submitted: February 1, 2011

Decided: April 11, 2011

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 11th day of April 2011, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The defendant-appellant, Martell McManus, filed this appeal from the Superior Court's sentence for his violation of probation (VOP). The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of McManus' opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that McManus pled guilty on March 29, 2010 to one count of second degree conspiracy. The Superior Court sentenced him to two years at Level V incarceration, to be suspended immediately for one year at Level

II probation. On June 10, 2010, McManus, in a different criminal action, pled guilty to one count each of menacing and offensive touching. The Superior Court sentenced him on each charge to 30 days at Level V incarceration, to be suspended immediately for six months at Level II probation. Thereafter, in October 2010, McManus was charged with violating probation in each of his cases. After a hearing, the Superior Court sentenced him for violating the probation associated with his conspiracy conviction to four months at Level V incarceration and discharged him as unimproved from his other probationary sentences. This appeal followed.

(3) McManus' only issue on appeal is that the Superior Court judge imposed an excessive sentence for his VOP. While his argument is hard to follow, McManus seems to argue that he only had 84 days left to serve on probation, which somehow he interprets as leaving only fourteen days that the Superior Court could have sentenced him to serve at Level V incarceration. We find no merit to McManus' argument.

(4) In sentencing a defendant for a VOP, the trial court is authorized to impose any period of incarceration up to and including the balance of the Level V time remaining to be served on the original sentence.¹ In this case, following McManus's VOP on all of his prior sentences, there was two years and two months

¹ 11 Del. C. § 4334(c).

of Level V time remaining to be served from McManus' original sentences, which the Superior Court could have reimposed entirely after finding McManus guilty of a VOP. Thus, the four month sentence imposed by the Superior Court was authorized by law, and we conclude that it was neither arbitrary nor excessive.²

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice

² See *Mayes v. State*, 604 A.2d 839, 842 (Del. 1992).